



**Testimony of Ann Notthoff<sup>1</sup> NRDC**  
**California Performance Review Commission**  
**Resource Conservation and Environmental Protection Recommendations**  
**Fresno State University, September 17, 2004**

We appreciate the opportunity to present our views today. On behalf of the over one million members and activists of NRDC (the Natural Resources Defense Council), more than 300,000 of whom are Californians, we urge the Commission to evaluate these recommendations based on a simple question: *do they, or do they not, improve the State's ability to protect our public health and environment?* Many proposals regarding air, land, energy and water resources do not meet this test and therefore should be shelved, but others could result in better protection and merit consideration. However, the public deserves more time and more opportunities to review and comment on all of them. We urge you to extend the time for people to comment on this far-reaching set of proposals. NRDC will provide written comments to the Commission. Today, I'd like to offer some initial thoughts on how best to approach this exercise, as well as evaluations of key proposals of concern to the environmental community.

***1. Do no harm. CPR proposed recommendations and reorganization should improve, not reduce, the State's ability to protect public health and the environment.***

The Public Policy Institute found in a recent poll<sup>2</sup> that Californians trust State government more than the federal government to protect the environment and they're willing to pay for those protections. Clearly, the public does value the environmental and public health services provided by the State. So, first any reorganization should do no harm – do not reduce State environmental protection. Why does the public trust the state more than the federal government? State services are closer to the people so they have more direct experience with the programs. Also, the independent structure (including such elements as set terms, mixed appointing authorities and direct public hearings), of many of the environmental boards and commissions has protected them from the full force of partisan politics – as opposed to the federal model - and allowed them to develop

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<sup>2</sup> <http://www.ppic.org/main/pressrelease.asp?i=503>, July 2004

significant expertise on critical issues carrying over their work from one administration to another.

This stability has created expert boards and commissions that are responsible for some of the most historic environmental policy in the country and have influenced international efforts, as well. From setting appliance efficiency standards that changed the market nationally to tackling air pollution from mobile sources before anyone else, California environmental agencies are international leaders. Recommendations to eliminate core elements of the State's environmental infrastructure go overboard and should not proceed to the next stage. Instead, the Commission should forward recommendations to make these boards more effective and improve efficiencies. . .

***2. The people of California need more time and additional opportunities to comment on a report of this magnitude.***

While we can all agree that there are many ways to make California government more efficient and coordinated, the tremendous public interests at stake here make moving too fast a mistake. NRDC believes strongly that a process of this magnitude must provide significant opportunities for public review and comment, as well full consultation with the State legislature. We, along with other public interest groups, submitted a letter in April 2004 to the governor regarding the need for broad input and deliberate analysis (attached), yet very few recommendations before you reflect the views of public interest community and environmental groups.

The sheer volume of this undertaking argues for organization, but we are hearing from too many citizens and community groups who find this formalized participation process cumbersome enough to inhibit meaningful feedback. We recognize the efforts that the Commission is making to hear from interested members of the public, but we urge you to continue to solicit a wide range of views in multiple settings. In particular, the Commission should hold a hearings in locations where there is widespread interest in these issues and the comment deadline should be extended beyond September 30<sup>th</sup>. Reorganization that does not meaningfully involve the public will set back thoughtful reform, not advance it.

***3. Environmental boards and commissions are the first line of defense for the State's public health and environment. "If it ain't broke, don't fix it." CPR fails to make the case for why proposed reorganization of environmental programs would be better.***

As the independent Legislative Analyst's Office (LAO) found in its August review of the CPR<sup>3</sup> "the rationale for some of [CPR's] reorganization proposals is not clear [and] it does not examine whether the state should continue to perform certain functions." It does not conduct any analysis to show that the various boards and commissions slated for elimination have failed in their mission. It has not conducted any analysis to show that an alternative structure would perform better. It has not addressed the balance with local government that the current structure achieves. It has not

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<sup>3</sup> An Initial Assessment of the California Performance Review, LAO, 8/27/04, <http://www.lao.ca.gov/>

presented an alternative means for public participation in these important decisions. In short it has not made the case for some of the very proposals

Proposals to eliminate the principal boards and commissions like the California Air Resources Board (CARB), State Water Resources Control Board (SWRCB), Regional Water Quality Control Boards (RWQCB), California Energy Commission, State Lands Commission and Board of Forestry are non-starters from an environmental protection standpoint. In the face of many challenges, California's air, water, energy, and land regulatory bodies have managed to produce many improvements in California's environment and economy and in our quality of life. The environmental community believes these boards should be retained, not because we support all of their decisions, we clearly do not always agree, but we believe these boards have effectively played a crucial role in protecting the environment. The regional boards also provide a valuable opportunity for citizens to participate in decisions regionally. Local access to State programs facilitates public participation.

The State's principal environmental boards should be retained. The recommendations go too far when they slate the CARB, SWRCB, RWQCB, California Energy Commission, the Board of Forestry and the State Lands Commission for elimination. The Integrated Waste Management Board should be restructured and retained. Any reorganization should not set back the progress we have made. The LAO makes a useful historical reference on this point "California's past successes and failures with reorganization plans strongly suggest that reorganizations should be undertaken only when (1) there is a clearly defined problem with the existing system and (2) there is a convincing reason to believe that the new system will address the problem and, more generally, enable the state to provide services more efficiently and effectively."

***4. Public participation and accountability strengthen decision making and produce more enduring decisions. CPR should result in across the board strong public participation mandates, not reduce public participation.***

Our State's participatory decision-making tradition relies, in large part, on the many independent boards and commissions that possess expertise on a wide range of public health and environmental issues. The independent board structure provides an effective forum for public participation. During public hearings on permits and proposed rules, members of the public currently have the opportunity to address the decision maker directly. Decisions made by these boards are made in public before the press and the public. These boards are not simply rubber stamps of the staff recommendations. Decisions reflect appointees' own experience and public testimony. Multiple member boards create an opportunity for diverse representation in decision making. NRDC supports establishing a high standard of public participation that should be applied across the board in environmental and public health decisions.

***5. Claims of budget savings from environmental recommendations are overblown. Beware of false economies. Promote broader use of environmental fees.***

The LAO, a leading source of expertise on State Budget matters believes that “many of [CPR’s] fiscal savings estimates are overblown.” Less than 2% of the State General Fund goes to environmental programs. These recommendations would affect even a more trivial amount of public funds - less than 0.1% of the projected five-year projected savings come from the all the reforms of the environmental agencies. Retaining these boards would affect a trivial percentage of even this small amount. But, opportunities to increase revenue to the State while promoting responsible environmental behaviors through the increased use of fee based programs are promising. Over the past two years, several efforts to broaden the funding base for key environmental programs in air, water and toxic have made progress in this area, but much remains to be done.

**6. *“Streamlining” should not be code word for “weakening” environmental protections.***

The recommendation (RES 14) to “streamline” permitting to reduce petroleum infrastructure bottlenecks” jeopardizes the health and welfare of Californian’s by shortcutting important health-protective permitting processes and environmental review without saving the State any direct costs. The petroleum industry has fought unsuccessfully for years for less stringent air pollution and permitting regulations, and we are troubled that this proposal has become part of the current CPR. NRDC sounded the alarm on the danger of California’s increasing dependence on oil in our 2002 report, *Fueling the Future*,<sup>4</sup> in which we outline a strategy for aggressive demand reduction rather than refinery expansion as the most sustainable and environmentally preferred approach to dealing with price volatility problems. CPR recommends the opposite.

NRDC takes particular issue with the implication throughout this proposal that air quality and other regulations placed on refineries – a major source of smog-forming, toxic, and other pollution in our state – are nothing more than “unnecessary, burdensome regulations preventing the expansion or new construction of oil refineries.” They are in place to protect public health. They also protect the public’s right to be part of the decision making process on whether new or expanded sources of pollution will be sited in their neighborhoods and, if so, what mitigation measures will be put in place to protect them from harmful pollution and other impacts.

We are also strongly opposed to the apparent reallocation of permitting jurisdiction to the state and away from local agencies. Local agencies, such as the South Coast Air Quality Management District – which oversees the region with worst air quality in the nation – are in the best position to weigh the costs and benefits of siting and permitting decisions in their regions. The proposed “one-stop shop” for permitting, “streamlining” of permitting decisions, and creation of a generic “model” for permitting would all take away the benefits of local decision making, to the detriment of the public and local communities. It also takes away valuable opportunities for public comment.

**7. *Review would be most effective by taking broad review of two main environmental agencies and targeting programs with outdated and overlapping responsibilities.***

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<sup>4</sup> <http://www.nrdc.org/air/transportation/calfuel/calfuel.pdf>

NRDC believes that CPR can provide a broad review at the State's two central environmental agencies – CalEPA and the Resources Agency. Both the Resources Agency and CalEPA have a confused organization chart and lines of responsibility can be unclear. There are valuable recommendations, such as increased use of environmental fees, increased funding for brown fields clean up, and improved use of technology in the environmental impact report process. Many CPR recommendations make sense. For example, when dealing with brown field clean up, there is no real justification for the water boards and the Department of Toxic Substance Control to have overlapping jurisdiction over site remediation. This creates an opportunity for some to engage in forum shopping. Certainly, there are boards and commissions whose mission is outdated or whose mission is too narrow. These are candidates for elimination, but the analysis to support these proposals is too often missing to fully inform careful decisions.

***8. Consolidation of emergency response clean up programs with consistent strong standards could improve land and water quality.***

There are several useful proposals in the discussion of consolidating clean up, spill prevention and emergency response programs (RES 02). NRDC support's investigation of efficiency opportunities offered by consolidating the currently fragmented responsibilities for clean up, spill prevention and emergency response into a unified system. Technology compatibility is key and could result in significantly improved communication between response programs and improved clean up capability. The current structure for cleaning up contaminated land sites, brown fields, encourages shopping among different agencies and offices on these issues. The status quo also increases the problems with inconsistencies in public participation and enforcement among various agencies charged with overseeing toxic waste-related issues in California. In addition, fragmentation in this area does a disservice to communities, which need a single point of contact and a single responsible office with which to interact to assure that sites are cleaned up effectively and that community health is protected.

Thank you for your consideration of our views. NRDC is working with a coalition of public interest groups to develop comprehensive written comments on CPR proposals. We believe that in order to move forward on a useful examination of how best to improve State environmental and public health programs, clear goals of net gain should be set, a more targeted approach of examining specific agency lines of responsibility and authority should be pursued and, most importantly, a more robust effort to reach out and incorporate the ideas of the people of California who depend on the State to protect our public health and environment should be embraced.